HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 282 (M/S) / 2004

Gurudara Guru Nanak Amrit Darbar
Versus.

Civil Judge (J.D.) and another.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 16.4.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 282 (M/S) of 2004

Gurudwara Guru Nanak Amrit Darbar
Sansthan. …..Petitioner

Vs.

Civil Judge (Senior Division)
and another. …Respondents

Counsel for the petitioner Sh. Ram Ji Srivastava
Standing Counsel for the respondent

Dated: 16.4.2004

Hon'ble Rajesh Tandon, J.

Heard Sh. Ram Ji Srivastava learned counsel for the parties and Standing counsel for the respondent.

By the present writ petition the petitioner has prayed for the issue of an order or direction commanding the Civil Judge (Senior Division) II nd Fast Track Court, Dehradun respondent no. 1 to expedite the suit no. 54 of 2003 Gurudwara Guru Nanak Judge (Senior Division) / II nd Fast Track Court, Dehradun-respondent no. 1.

Brief facts giving rise to the present writ petition are that the petitioner has field for ejectment being suit no. 54 of 1999 Gurudwara Guru Nanak Amrit Darbar Sansthan Vs. Tilak Raj in the Court of judge, Small Causes, Court/ Civil Judge (Senior Division), Dehradun on 20.12.1999.

The grievance of the petitioner is that the suit of Small Cause nature field is still pending before the court below for a long time. The petitioner is in urgent need of the tenanted accommodation as the new construction of Gurudwara premises are in progress and the disputed premises are required to be vacated by the respondent no. 2. The respondent no. 2 has not filed his written statement in the suit in order to linger on the proceedings before the court below.

The powers given to the Small Cause Court is quoted below:-

Section 7 of the Code of Civil Procedure Act reads as under:-

"Provincial Small Cause Courts. – *The following provisions shall not extended to Courts constituted under the provincial Small Cause Courts Act, 1887) [or under the Berar Small Cause Courts Law, 1905], or to Courts exercising the jurisdiction of a Court of Small Causes [under the said Act or law], [or to courts in [any part of India to which the said Act does not extend] exercising a corresponding jurisdiction] that is to say,-*

(a) so much of the body of the code as relates to-

(i) Suits excepted from the congnizance of a Court of Small Causes;

(ii) the execution of decrees in such suits;

(iii) the execution of decrees against immovable property.

As will appear from the aforesaid provision that there is a limited scope as will decide the cases under the Small Cause Act.

Order 50 Rule 1 of Provincial Small Cause Courts provides as under:-

" *1- Provincial Small Cause Courts:- The provisions hereinafter specified shall not extent to Courts constituted under the Provincial Small Cause Courts Act, 1887(9 of 1987) [or under the*

Berar Small Cause Courts Law, 1905] or to Courts exercising the jurisdiction of a Court of Small Causes [under the said Act or law][or to Courts in [any part of India to which the said Act does not extend exercising a corresponding jurisdication] that is to say-

(a) so much of this Schedule as relates to-

(i) Suits excepted from the congnizance of a Court of Small Causes or the execution of decrees in such suits;

(ii) the execution of decrees against immovable property or the interest of a partner in partnership property;

(iii) the settlement of issues; and

(b) the following rules and orders:-

Order II, Rule 1 (frame of suit);

Order X, Rule 3 (Record of examination of parties):

Order XV, except so much of Rule 4 as provides for the pronouncement at once of judgment;

Order XVIII, Rules 5 to 12 (Evidence);

Orders XLI to XLV (appeals);

Order XLVII, Rules 2,3,5,6,7 (review);

Order XL.

In the matter of Kedarnath Vs. Mohan Lal Kesarwani 2002(1) Allahabad Rent Cases 186, The Apex Court has observed as under:-

"It is not disputed at the Bar that such a suit as was filed by the landlord appellant is, in the State of U.P to be heard and disposed of by a Court of small causes and hence would be governed by the provisions of the PSCC Act. Section 17 thereof provides as under:-

"17Application of the Code of Civil Procedure- *(1) The procedure prescribed in the Code of Civil Procedure, 1908, shall save in so far as is otherwise provided that Code or by this Act, be the*

in so far as is otherwise provided that Code or by this Act, be the procedure followed in a Court of Small Causes in all suites cognized by it and in all proceedings arising out of such suits:

Provided that an application for an order to set aside a decree passed ex-parte or for a review of judgment shall, at the time of presenting the application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed.

Where a person has become liable as surety under the Proviso to sub Section (1), the security may be realized in manner provided by Section 145 of the Code of Civil Procedure, 1908,"

*" **The object behind establishing Small Cause Courts conferred with jurisdiction to try summarily such specified category of cases which need to be and are capable of being disposed of by adopting summary procedure of trial is to secure an expeditious disposal and to curtail the lengthy procedure of litigation.** Excepting an order for compensatory costs in respect of false or vexatious claims or defenses or an order imposing fine or directing the arrest or detention in the civil prison of any person (except where such arrest or detention is in execution of a decree.), orders and decrees of Courts of small causes are not appeasable they are only revisable by the High Court (or by District Corot under Section 115 of CPC as amended in its application to state of U.P.)"*

Section 15 of the Provincial Small Cause Courts Act 1987 provides the nature of the suit, which is being tried by Small Cause Courts Act. Section 15 of Provincial Small Cause Courts Act is quoted below:-

*"**Cognizable of suits by Courts of Small Causes-***

(1) *A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits expected from the cognizance of a Court of Small Causes.*

(2)Subject to the exception specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of a Small Causes.

(3)Subject as aforesaid, the [State] Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.

Uttar Pradesh:-

For Article (4) , substitute the following:-

"(4) a suit for the possession of immovable property or for the recovery of an interest in such property, but not including a suit by a lessor for the eviction of alessee from a building after the determination of his lease, and for the recovery from him of compensation for the use and occupation of that building after such determination of lease.

Explanation.- *For the purposes of this Article, the expression 'building' means a residential or non-residential roofed structure, and includes any land (including any garden), garages, out-houses, appurtenant to such building, and also includes any fittings and fixtures affixed to the building for the more beneficial enjoyment thereof."*

As will appear from the aforesaid that there being a provision for speedy disposal with regard to the matters covering landlord and

is to expedite the hearing in the manner prescribed by the Code of Civil Procedure for suits of small cause nature.

In view of the aforesaid facts, the respondent no. 1 is directed to expedite the hearing of the suit in accordance with the observations of the Apex Court preferably within a period of 6 months after production of the certified copy of the order.

Subject to the aforesaid observations, the writ petition is disposed of at the admission stage. There will be no order as to costs.

Let copies of this judgment be circulated amongst all the District Judges Subordinate to the High Court of Uttaranchal.

(Rajesh Tandon J.)

16.04.2004

M.K